



IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL AND TAX DIVISION

CORAM: D. S. MAJANJA J.

CIVIL CASE NO. E010 OF 2020

BETWEEN

A.K. NISATA SANAYI VE TICARET A. S.....PLAINTIFF

AND

REDOX CHEMICALS (U) LIMITED1ST DEFENDANT

TUMUSHIME WILLIAM 2ND DEFENDANT

FRED T. CATE3RD DEFENDANT

RULING

1. The plaintiff is a company incorporated in Turkey. It has filed a Notice of Motion dated 21st January 2020 seeking injunctive relief. The application is supported by the affidavit of Huseyin Eviz, its General Manager, sworn on 21st January 2020. Although the application is not opposed, I have to satisfy myself that the orders sought are warranted and that the plaintiff has made out a case for the prayers sought. The facts upon which the case is based are set out in the plaint and deposition of Mr Eviz and are as follows.

2. The Company is in general business and manufacturing and in the course of business, it works and trades with affiliated companies on special terms including procurement for sale and delivery of its commodities on special terms including credit sales. One of the companies associated with the plaintiff is **AAKO B. V.** having its business in the Netherlands. It enjoys special terms of trade and cooperation. In 2019, the defendants' stole **AAKO B. V's** identity and registered a false and deceptive web identity and address: **www.aakochemicals.com** and linked **AAKO B. V's** correct web address identity **www.aako.nl**.

3. The fraudsters, who were at the time unknown to the plaintiff in Turkey and to **AAKO B.V.** in the Netherlands requested **AAKO B. V's** employee's name available as a matter of course on **AAKO B. V's** website to fraudulently place orders with the plaintiff online for sale and delivery by the plaintiff to themselves of chemical products manufactured by the plaintiff company making their orders deceptively appear by linkage and similarity of their website to that of **AAKO B. V** by falsely making it appear that the said orders had the sanction of or had been generated by **AAKO B. V** as evidenced by several email communications between the plaintiff and the defendant before and after shipment of the consignment.

4. Acting on those representations, the plaintiff completed the defendants order and shipped the said consignment from Tekirdag, Turkey aboard Mediterranean Shipping Company ("MSC"). MSC issued to the plaintiff a Bill of Lading No. MEDUTE 211397. The plaintiff accordingly mailed it to the 1st defendant together with Packing list, Health Certificates vouching fitness and merchantability of the consignment and Certificate of Origin. The plaintiff then sent the Invoice No. 1HR2019000001447-1448 dated 1st October 2019 for the consignment to **AAKO B. V.** for payment. The consignment was due for discharge by MSC to the defendants at Mombasa in or about December 2019. After the plaintiff became aware of the fraudulent online orders by the defendant orchestrated on the plaintiff and **AAKO B. V.**, it placed warnings on its website informing all of its affiliated suppliers and the public of fraud. **AAKO B. V** requested the company hosting its website to cancel the defendants false web identity **www.aakochemicals.com** and its linkages to **AAKO B.V's** website which they cancelled and reported the matter to the police in the Netherlands.

5. Further and in order to induce the plaintiff, the 2nd and 3rd defendants as servants, agents or associates of the 1st defendant by email dated 3rd September 2019 to the plaintiff referenced Fred Ten Cate **support@aakochemicals.com** and copied to **AAKO B. V** deceptively placed an official purchase order requisitioning the plaintiff to supply and deliver goods to the order of the 3rd defendant while posing fraudulently as

the sales support manager of AAKO chemicals. Believing that the order emanated from **AAKO B. V** and the 3rd defendant to be sale support manager duly affiliated to it, the plaintiff supplied to the 1st defendant on concessionary terms a shipment, packed and delivered to MSC a consignment made up of Natural Corn (Maize) starch in 25kg bags, weighing 114 metric tons loaded in 6x20 ft containers at a price of USD 48,222 and Liquid Glucose in 300kg HPDE Drums palletized 6x20 ft containers weighing 144 metric tons at a price of USD 61,200 US making a total of USD 109,422 payable to the plaintiff through its bank account at TURKIYE ZIRAAT BANKASI-HADIMKOY TICARI branch within 30 days in terms of the commercial invoice addressed to **AAKO B. V** and in terms of the Bill of Lading.

6. The plaintiff delivered the said consignment on 22nd October 2019 to MSC on terms in their Bill of Lading No. MEDUTE 211395 as carriers for delivery to the 1st defendant at Mombasa against the plaintiff's commercial invoice issued to **AAKO B. V**. on the basis that payment of USD 109,422 would be made by them within 30 days after date of Bill of Lading.

7. The shipment arrived and was discharged at Mombasa in mid-December 2019 and the plaintiff, fearful that the defendants who were in possession of the original Bill of Lading No. MEDUTE 211395 issued by MSC to the plaintiff might present it together with the packing list and other consignment documents and take delivery of a consignment fraudulently. Through its advocates on record, the plaintiff made report of the frauds to the police and to the Kenya Revenue Authority. Subsequent telephone calls by the plaintiff to the defendants at the telephone numbers cited on the procurement and consignment documents have remained unanswered making it believe the defendants are fraudsters. The plaintiff also fears that if the defendants took delivery of the consignment at Mombasa or at any other place, it would be unable to recover possession of the said consignment or the price thereof from the defendants who have procured supply of the said order using false identities and addresses to deceive the plaintiff.

8. As I stated earlier, the facts set out above together with the documents annexed to the deposition are uncontroverted. The plaintiff has established a prima facie case of fraud against the defendants. I am also aware that the court should not issue mandatory orders at an interlocutory stage but I am satisfied that this is such a case.

9. I therefore allow the Notice of Motion dated 21st January 2020 and order as follows:

(a) THAT an injunction be and is hereby issued against the defendants by themselves or their agents or servants from howsoever presenting to Mediterranean Shipping Company or Kenya Revenue Authority, the Bill of Lading MEDUTE 211395 and the consignment and delivery documents including the parking list for purposes of clearing or taking delivery of the said consignment or warehousing or transportation thereof to Uganda or to any other place or from howsoever taking delivery handling or selling any part thereof.

(b) A mandatory injunction be and is hereby issued directing the Kenya Ports Authority, Kenya Revenue Authority or any other person in that regard to release to the plaintiff all that consignment contained and particularized in the Bill of Lading MEDUTE 211395.

(c) As a condition for the aforesaid orders, the plaintiff shall pay all the shipping, handling and storage charges, taxes and any other fees and or any other payments due upon delivery of the consignment contained in the Bill of Lading MEDUTE 211395 and shall provide a suitable and acceptable deed of indemnity to each of the bodies involved including Mediterranean Shipping Company and its agents, Kenya Revenue Authority and Kenya Ports Authority.

(d) The costs of the application shall be borne by the defendants.

DATED and DELIVERED at NAIROBI this 22nd day of JUNE 2020.

D. S. MAJANJA

JUDGE

Mr Wamalwa instructed by F. N. Wamalwa and Company Advocates for the plaintiff.